IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

CRL.A.No. 146 of 2002()

CC.1212/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, CHERTHALA

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APPELLANT: COMPLAINANT:

PIOUS JOHN, ANCHUTHARA HOUSE,
PANAVALLI, CHERTHALA.

BY ADV. SRI.TOMY SEBASTIAN

RESPONDENTS: ACCUSED & STATE:

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1. SASI, S/O.THANKAPPAN,
KALATHIPARAMBU HOUSE, CHANDIROOR, CHERTHALA.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY P.P. SRI.THOMAS JOHN AMBOOKKAN FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-8-2007, THE COURT ON 13/08/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 146 of 2002

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Dated this the 13th day of August,2007

JUDGMENT

The appeal is filed by the complainant against the judgment in C.C.No.1212/96 on the file of the Court of the Judicial First Class Magistrate-I, Cherthala. In the complaint it is alleged that the 1st respondent borrowed an amount of Rs.60,000/- for his business purpose from the appellant and he issued a cheque for the said amount to the appellant and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the 1st respondent. After complying the statutory formalities, the appellant filed the complaint alleging that the 1st respondent had committed an offence punishable under section 138 of the Negotiable Instruments Act. To prove the case against the 1st respondent, the appellant himself was examined as PW1 and Exts.P1 to P7 were marked. After closing the prosecution evidence, the 1st respondent was questioned under section 313 Cr.P.C. He denied the entire allegation and stated that he had not issued Ext.P1 cheque in discharge of a legally enforceable debt as alleged in the

complaint. He also stated that he was a subscriber of two chitties conducted by the appellant and when he received the chitty amount, he issued blank cheque as a security for the chitty amount and the same was misused by the appellant for filing the complaint. To prove this case, Clerk of Soorya Chitty was examined as DW1 and Exts.D1 to D4 were marked. Considering the evidence adduced on either side, the trial court found that the appellant failed to prove the case against the 1st respondent that the cheque in question was issued in discharge of a legally enforceable debt whereas the trial court found that the 1st respondent had issued a cheque in question as a security for the chitty amount.

2. The specific case alleged in the appeal is that the trial court ought to have seen that Ext.P1 cheque was given for the discharge of an amount of Rs.60,000/- which had been borrowed by the 1st respondent from the appellant. The another contention raised in the appeal is that the trial court misread the evidence of PW1 to find that the 1st respondent's case is more probable. The specific complaint was that the 1st respondent had issued Ext.P1 cheque in discharge of an amount of Rs.60,000/- alleged to have been borrowed from the appellant. As per the evidence of DW1 and also from Exts.D1, D2 and D4 it is proved beyond reasonable doubt that the 1st respondent was a subscriber of chitty Nos.19 and 20 conducted

by the appellant and the cheque in question was issued as a blank cheque at the time of receiving the chitty amount. In the above circumstances, this Court is of the view that the judgment of the trial court is on evidence and it requires no interference by this Court.

3. Hence, the appeal fails and it stands dismissed confirming the judgment of the trial court.

K. Thankappan,
Judge.

K. Thankappan,J.

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Judgment
13-8-2007